

§ 2601.301

(6) Would reflect unfavorably upon the ability of the agency, or any of its employees, to carry out its responsibilities or official duties in a fair and objective manner, or would compromise or appear to compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

(b) [Reserved]

NOTE TO §2601.204: Nothing in this part shall prohibit the agency from offering or providing the donor an appropriate acknowledgment of its gift in a publication, speech or other medium.

Subpart C—Accounting Requirements

§ 2601.301 Accounting of gifts.

(a) The Administration Division shall ensure that gifts are properly accounted for by following appropriate internal controls and accounting procedures.

(b) The Administration Division shall maintain an inventory of donated personal property valued at over \$500. The inventory shall be updated each time an item is sold, excessed, destroyed or otherwise disposed of or discarded.

(c) The Administration Division shall maintain a log of all gifts valued at over \$500 accepted pursuant to this part. The log shall include, to the extent known:

(1) The name and address of the donor;

(2) A description of the gift; and

(3) The date the gift is accepted.

PART 2602—EMPLOYEE RESPONSIBILITIES AND CONDUCT, ADDENDUM [RESERVED]

PART 2604—FREEDOM OF INFORMATION ACT RULES AND SCHEDULE OF FEES FOR THE PRODUCTION OF PUBLIC FINANCIAL DISCLOSURE REPORTS

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AUTHORITY: 5 U.S.C. 552; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

SOURCE: 60 FR 10007, Feb. 23, 1995, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 2604 appear at 66 FR 3439, Jan. 16, 2001.

Subpart A—General Provisions

§ 2604.101 Purpose.

This part contains the regulations of the Office of Government Ethics (OGE) implementing the Freedom of Information Act (FOIA) and Executive Order 12600. It describes how any person may obtain records from OGE under the FOIA. It also implements section

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105(b)(1) of the Ethics in Government Act of 1978, as amended, which authorizes an agency to charge reasonable fees to cover the cost of reproduction and mailing of public financial disclosure reports requested by any person.

§ 2604.102 Applicability.

(a) *General.* The FOIA and this rule apply to all OGE records. However, if another law sets forth procedures for the disclosure of specific types of records, such as section 105 of the Ethics in Government Act of 1978, 5 U.S.C. appendix, OGE will process a request for those records in accordance with the procedures that apply to those specific records. See 5 CFR 2634.603 and subpart G of this part. If there is any record which is not required to be released under those provisions, OGE will consider the request under the FOIA and this rule, provided that the special Ethics Act access procedures cited must be complied with as to any record within the scope thereof.

(b) *The relationship between the FOIA and the Privacy Act of 1974.* The Privacy Act of 1974, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records as defined in the Privacy Act. Requests from individuals for records about themselves which are contained in an OGE system of records will be processed under the provisions of the Privacy Act as well as the FOIA. OGE will not deny access by a first party to a record under the FOIA or the Privacy Act unless the record is not available to that individual under both the Privacy Act and the FOIA.

(c) *Records available through routine distribution procedures.* When the record requested includes material published and offered for sale (e.g., by the Superintendent of Documents, Government Printing Office) or which is available to the public through an established distribution system (such as that of the National Technical Information Service of the Department of Commerce), OGE will explain how the record may be obtained through those channels. If the requester, after having been advised of such alternative access, asks for regular FOIA processing instead, OGE will provide the record in

accordance with its usual FOIA procedures under this part.

§ 2604.103 Definitions.

As used in this part,

Agency has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

Business information means trade secrets or other commercial or financial information, provided to the Office by a submitter, which arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act.

Business submitter means any person who provides business information, directly or indirectly, to the Office and who has a proprietary interest in the information.

Commercial use means, when referring to a request, that the request is from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put. When a request is from a representative of the news media, a purpose or use supporting the requester's news dissemination function is not a commercial use.

Direct costs means those expenditures actually incurred in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include the salary of the employee performing the work and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

Duplication means the process of making a copy of a record. Such copies include paper copy, microform, audiovisual materials, and magnetic tapes, cards, and discs.

Educational institution means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institute of professional or vocational education, which operates a program of scholarly research.